

No. 9(1) 82-6Lab/4534.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s. Barmalt India Pvt. Ltd., Gurgaon:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

References Nos. 285 & 290 of 1981

between

S/SHRI CHHAILA RAM AND DHARAM PAL WORKMEN AND THE RESPONDENT MANAGEMENT OF M/S. BARMALT INDIA PRIVATE LIMITED, GURGAON.

Shri Shardha Nand for the workmen.

Shri M. P. Gupta for the management.

AWARD

These references Nos. 285 and 290 of 1981 have been referred to this Court by the Hon'ble Governor of Haryana,—vide his order Nos. ID/ GGN/107/81/55893 and 108/81/55852 dated 13th November, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between S/Shri Chhaila Ram and Dharam Pal workmen and the respondent management of M/s. Barmalt India Private Limited, Gurgaon. The terms of the references were:—

Whether the termination of services of S/Shri Chhaila Ram and Dharam Pal was justified and in order? If not, to what relief are they entitled?

After receiving the references, notices were sent to the parties. The parties appeared and filed their pleadings. The case of the workmen according to the demand notices and statement is that they joined the service on 2nd May, 1976 and 2nd June, 1977 as Helper and drawing Rs. 240 per month respectively. Their services were terminated illegally without any notice, charge sheet etc. on 22nd July, 1981 due to the victimization for the trade union activities and the workmen are entitled for their re-instatement with full back wages and continuity of services.

The case of the respondent according to written statement is that the workmen are estopped with their own act and conduct to raise the present demand. The workmen were dismissed from the service on 22nd July, 1981 after conducting the enquiry and full opportunity to the workmen. The order of the dismissal of the workmen are quite legal and justified. The charge-sheet were given to the workmen on 25th February, 1981. They replied the charge sheet. The management found their reply unsatisfactory, and constituted a domestic enquiry against them. Shri S. N. Parkash was appointed as Enquiry Officer and the enquiry was duly conducted. The Enquiry Officer submitted his report holding the workman guilty of the charges and after considering the enquiry report, show cause notices were given to these workmen and they submitted their reply. The management considered the reply and other concerned records and decided to dismiss these workmen from 22nd July, 1981. So the dismissal order of the workmen were justified. The respondent took the same plea before the Conciliation Officer and the workmen raised no such objection against the enquiry before the Conciliation Officer as well as in this Court and mentioned nothing about the enquiry of the Enquiry Officer. So the references are bad in law and may be rejected.

On the pleadings of the parties, the following issues were framed on 18th January, 1982:—

- (1) Whether the domestic enquiry conducted by the management is legal and justified? If so, to what effect?
- (2) Whether the termination of services of S/Shri Chhaila Ram and Dharam Pal justified and in order? If not, to what relief are they entitled?

After framing the issues, both the parties requested to consolidate these references. Their prayers were acceded and the references were consolidated. It is also ordered that the evidence shall be recorded in Reference No. 285 of 1981 of Shri Chhaila Ram.

My findings on issues are as under:—
ISSUE NO. 1:

The representative of the respondent argued on this issue is that the workmen were dismissed after domestic enquiry in which full opportunity was given to these claimants. They received the letters of enquiry and know the fact that the enquiry was conducted against them, even after that they have mentioned nothing about the

enquiry in their demand notices. They have simply stated that their services were terminated for the victimization due to the trade union activities and no objections or allegation about the enquiry even in their claim statement. They have not stated a single word about the enquiry. It shows that fair and proper enquiry were conducted against these workmen and they have no objection or allegation against the respondent to conduct or holding the enquiry. It itself proves that the workmen have nothing to say about the enquiry, got conducted by the Enquiry Officer after giving the full opportunity to the workmen. He further argued that the management produced Shri V. P. Kapoor, Chief Executive as MW-1 who has stated in his statement that these two workmen were charge-sheeted,—vide Exhibit M-1 and M-2. These chargesheets were received by these workmen,—vide Exhibit M-5 and M-6 and they replied the same,—vide Exhibit M-7 and M-8. After going through the reply to these claimants, the respondent did not find the replies as satisfactory and enquiry was ordered. The Enquiry Officer Shri S. N. Parkash was appointed,—vide Exhibit M-9 and the letters to these workmen to inform the appointment of the Enquiry Officer were sent,—vide Exhibit M-10 and M-11. The postal receipts are Exhibit MW-2/2 and M-12 and acknowledgement Exhibit MW-2/5. These letters were received by these workmen,—vide Exhibit M-13 and M-14. The Enquiry Officer fixed the date for holding the enquiry on 9th April, 1981. The workmen inspite of the receipt of intimation,—vide letters Exhibit MW-2/3 and MW-2/6 did not turn up to participate in the enquiry. The Enquiry Officer adjourned the proceedings of the enquiry for 21st April, 1981 and intimations were sent to these workmen,—vide letters Exhibit MW-2/7 and MW-2/10. These letters were received by these claimants and the acknowledgements are Exhibit MW-2/9 and MW-2/12 and inspite of receipt of these intimations, the workmen did not come to participate in the enquiry. The Enquiry Officer after waited the workmen or any information for them proceeded ex parte. The ex parte proceeding is Exhibit MW-2/13. The Enquiry Officer recorded the ex parte evidence of Shri Khubi Ram Sharma as AW-1, Pehlad Mal AW-2, Sheo Raj Singh AW-3, Munna Ram AW-4, M. L. Bansal AW-5, Piran Nath Sharma AW-6 and Sobha Ram AW-7. All these witnesses prove the charge-sheet levelled against these workmen. The Enquiry Officer after going through the enquiry proceedings submitted his final report before the management as MW-2/13 in which he has held guilty to these workmen. After going through

all evidence oral and documents he found the charges are fully proved. He further argued that none appears of these workmen before the Enquiry Officer to participate in the enquiry proceedings inspite of receiving the enquiry intimation, proves this fact that the workmen had nothing to say about the charges against them. They chose not to appear before the Enquiry Officer and it is not bonafide on their part.

He further argued that Shri Dharam Pal as WW-1 has admitted in his statement that they have received the letters for enquiry and even after that they did not appear. After the enquiry report received the management sent a show-cause notice,—vide Exhibit M-15 to these workmen and these workmen replied the show-cause notice,—vide Exhibit M-19. Even in the reply of show-cause notices, the claimants did not raise any objection about conducting the enquiry. And the respondent after considering the replies of the workmen and finding of the Enquiry Officer decided to dismiss the workmen as the charges against them were of serious nature and such persons cannot be tolerated in the factory and they were rightly dismissed.

He further argued that the workmen were dismissed after a proper and fair enquiry but the workman has not stated anything about the enquiry in his demand notice, claim statement and lastly in his statement as WW-1. When there is not a single objection or allegation on behalf of the workmen against the enquiry shows and proves that the domestic enquiry was conducted properly and fairly and the workmen have no objection about the domestic enquiry.

On the other hand the representative of the workmen argued that these claimants entered in the factory on 2nd May, 1976 and constituted a union in the factory in the year 1980 in the name of AITUC Committee Regd. Gurgaon and that union raised some demands through a demand notice as stated by Shri Dharam Pal as WW-1 in his statement and he was a member of the union. The demand was got settled by the Labour Officer and there was a settlement between the parties. But the management did not implement the settlement and the union gave another demand notice on 19th December, 1980. On that demand notice the management threatened the union and asked to withdraw the demand. The management threatened to dismiss the services of the workmen and they suspended two or three workmen and Shri S. K. Yadav was appointed as Enquiry Officer. They sent Shri Shardha Nand on their behalf to participate in the enquiry

but the enquiry was not conducted due to some disturbance and the respondent stopped the workmen at the gate on 8th February, 1981. The claimants sent the report to the police but they did nothing about that report and union sat in Dharna and the photo copy of the Dharna is Exhibit W-1. This Dharna continued for four months and the leader met the D.C. and S.S.P. of the District. The letters in this respect are Exhibit W-2 and W-3. The workmen were not allowed to enter in the factory though we received the letters of the enquiry from the Enquiry Officer but we were stopped at the gate and did not allow to enter in the factory to participate in the enquiry proceedings. Our leader was beaten up in this struggle and the management illegally terminated the services of so many persons.

After hearing the arguments of both the parties and going through the file, I am of the view that on the issue of the domestic enquiry is fair and proper. The representative of the workman or the workman in his statement raised no allegation about the enquiry. The workmen prayed to the Enquiry Officer that the enquiry may be conducted outside the factory because they have danger to the life and stated that they were not allowed to enter in the factory for the enquiry. But the workmen have produced no evidence to prove this fact. They could file the complaints before the Labour Inspector and Labour Officer in this respect and could produce the copy of the same in the court in this regard that they were not allowed to enter in the factory. In the absence of any proof of their contention it cannot be believed as there is no objection and allegation about the conduct of the enquiry in the demand notice and claim statement. The workmen have neglected the facum of enquiry in this case and could not prove that the enquiry was malafide and not fair. So I hold that the enquiry was conducted fairly and properly by the management and this issue is decided in favour of the management and against the workmen.

ISSUE NO. 2:

After deciding the enquiry issue in favour of the respondent, there is no need to discuss this issue except the termination was made on the basis of this enquiry. When the enquiry was fair and proper then the termination orders are justified. The workmen stated in their demand notices and claim statement that their services were terminated for victimization due to the trade union activities but they failed to prove this fact

that their terminations were made for the victimization of the trade union activities. There is no record on the file to show that their services were terminated due to the victimization for the trade union activities. So the termination is justified and proper and that the workmen are not entitled to any relief.

The 29th April, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 905, dated 27th April, 1982.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)82-6-Lab./4535.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Barmalt India Pvt. Ltd., Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

References Nos. 287 & 288 of 1981.
between
S/SHRI NATHU RAM AND KISHAN LAL,
WORKMEN AND THE RESPONDENT
MANAGEMENT OF M/S. BARMALT INDIA
PRIVATE LIMITED, GURGAON.

Shri Shardha Nand, for the Workmen.
Shri M. P. Gupta, for the Management.

AWARD

These references Nos. 287 and 288 of 1981 have been referred to this Court by the Hon'ble Governor of Haryana,—vide his orders Nos. 1D/GGN/106/81/55873 and 105/81/55866, dated 13th November, 1981 under Section 10(i) (c) of the

Industrial Disputes Act, 1947 for adjudication of the dispute existing between S/Shri Nathu Ram and Shri Kishan Lal, workmen and the respondent-management of M/s. Barmalt India Private Limited, Gurgaon. The terms of the references were :—

Whether the termination of services of S/Shri Nathu Ram and Shri Kishan Lal was justified and in order ? If not, to what relief are they entitled ?

After receiving these references, notices were sent to the parties. The parties appeared and filed their pleadings. The case of the workmen according to the demand notices and claim statement is that they joined the service in the year 1974 and 1975 as Fitter/Helper and drawing Rs. 315 and 240 P.M., respectively. Their services were terminated illegally without any notice, charge-sheet, etc. on 22nd July, 1981 due to the victimization for the Trade Union activities and the workmen are entitled for their reinstatement with full back wages and continuity of services.

The case of the respondent according to written statement is that the workmen are estopped with their own act and conduct to raise the present demand. The workmen were dismissed from the service on 22nd July, 1981 after conducting the enquiry and full opportunity to the workmen. The order of the dismissal of the workmen are quite legal and justified. The charge sheet were given to the workmen on 25th February, 1981. They replied the charge sheet. The management found their reply unsatisfactory and constituted a domestic enquiry against them. Shri S. N. Parkash was appointed as Enquiry Officer and the enquiry was duly conducted. The Enquiry Officer submitted his report holding the workmen guilty of the charges and after considering the enquiry report, show cause notices were given to these workmen and they submitted their reply. The management considered the reply and other concerned records and decided to dismiss these workmen from 22nd July, 1981. So the dismissal order of the workmen were justified. The respondent took the same plea before the Conciliation Officer and the workmen raised no such objection against the enquiry before the Conciliation Officer as well as in this Court and mentioned nothing about the enquiry of the Enquiry Officer. So the references are bad in law and may be rejected.

On the pleadings of the parties, the following issues were framed on 18th January, 1982 :—

1. Whether the domestic enquiry was conducted by the management is legal and justified ? If so, to what effect ?

2. Whether the termination of the services of the workmen were justified and in order ? If not, to what relief are they entitled ?

After framing the issues, both the parties requested to consolidate these references. Their prayer were exceeded and the references were consolidated. It is also ordered that the evidence shall be recorded in Reference No. 287 of 1981 of Shri Nathu Ram.

My findings on issues are as under :—

ISSUE No. 1.

The representative of the respondent argued on this issue that the workmen were dismissed after domestic enquiry in which full opportunity was given to these claimants. They received the letters of enquiry and know the fact that the enquiry was conducted against them, even after that they have mentioned nothing about the enquiry in their demand notice. They have simply stated that their services were terminated for the victimization due to the trade union activities and no objections or allegation about the enquiry even in their claim statement. They have not stated a single word about the enquiry. It shows that fair and proper enquiry was conducted against these workmen and they have no objection or allegation against the respondent to conduct or hold the enquiry. It itself proves that the workmen have nothing to say about the enquiry got conducted by the Enquiry Officer after giving the full opportunity to the workmen. He further argued that the management produced Shri V. P. Kapoor, Chief Executive as MW-1 who has stated in his statement that these two workmen were charge-sheeted,—vide Ex. M-1 and M-2. These charge-sheets were received by these claimants,—vide M-5 and M-6 and they replied the same,—vide Ex. M-7 and M-8. After going through the reply of these claimants, the respondent did not find the replies as satisfactory and enquiry was ordered. The Enquiry Officer Shri S. N. Parkash was appointed,—vide Ex. M-9 and the letters to these workmen to inform the appointment of the Enquiry Officer were sent,—vide Ex. M-10 and M-11. The postal receipts are Ex. MW-2/2 and M-12 and acknowledgement Ex. MW-2/5. These letters were received by these workmen,—vide Ex. M-13 and M-14. The Enquiry Officer fixed the date for holding the enquiry on 9th April, 1981. The workmen inspite of the

receipt of intimation,—vide letters Ex. MW-2/3 and MW-2/6 did not turn up to participate in the enquiry. The Enquiry Officer adjourned the proceedings of the enquiry for 21st April, 1981 and intimation were sent to these workmen,—vide letters Ex. MW-2/7 and MW-2/10. These letters were received by these claimants and the acknowledgement are Ex- MW-2/9 and MW-2/12 and inspite of receipt of these intimation, the workmen did not come to participate in the enquiry. The Enquiry Officer after waited the workmen or any information for them proceeded *ex parte*. The *ex parte* proceeding is Ex. MW-2/13. The Enquiry Officer recorded the *ex parte* evidence of Shri Munna Ram as AW-1, Subedar AW-2, M. L. Bansal AW-3, Prem Nath AW-4, Daulat Ram AW-5, Sobha Ram AW-6. All these witnesses provided the charge-sheet levelled against these workmen. The Enquiry Officer after going through the enquiry proceedings submitted his final report before the management as MW-2/13 in which he has hold guilty to these workmen. After going through all evidence oral and documents he found the charges are fully proved. He further argued that none appearances of these workmen before the Enquiry Officer to participate in the enquiry proceedings inspite of receiving the enquiry intimation, proves this fact that the workman had nothing to say about the charges against them. They chose not to appear before the Enquiry Officer and it is not *bona fide* on their part.

not be tolerated in the factory and they were rightly been dismissal.

He further argued that the workmen were dismissed after a proper and fair enquiry but the workmen has not stated any thing about the enquiry in his demand notice, claim statement and lastly in his statement as WW-1. When there is not a signal objection or allegation on behalf of the workmen against the enquiry shows and proves that the domestic enquiry was conducted properly and fairly and the workmen have no objection about the domestic enquiry.

The representative of the workmen argued that these claimants entered in the factory on 1st January, 1974 and constituted a Union in the factory in the year 1980 in the name of AITUC Committee Regd. Gurgaon and that union raised some demands through a demand notice as stated by Sh Nathu Ram in his statement and he was Secretary of the union. The demand was got settled by the Labour Officer and there was a settlement between the parties. But the management did not implement the settlement and the union gave another demand notice on 19th December, 1980. On that demand notice the management threaten the union and asked to withdrawn the demand. The management threaten to dismiss the services of the workmen and they suspended two or three workmen and Shri S. K. Yadav was appointed as Enquiry Officer and Ex. W-1 was given to workmen. They send Shri Shardha Nand on their behalf to participate in the enquiry but the enquiry was not conducted due to some disturbance and the respondent stopped the workmen at the gate on 8th February, 1981. The claimants send the report to the police but they did nothings about that report and Union sit in Dharna and the photo copy of the Dharna is Ex. W-2 and issued a pamphlet which is Ex. W-3 after this Dharna. This Dharna continued for four months and the leader met the D.C. and S.S.P. of the District. The Union also write to the respondent management which are Ex. W-7 to W-11. The workmen were not allowed to enter in the factory though we received the letters of enquiry from the Enquiry Officer but we were stopped at the gate and did not allow to enter in the factory to participate in the enquiry proceedings. Our leader was beaten up in this struggle and the management illegally terminated the services of so many persons.

He further argued that Shri Nathu Ram has admitted in his statement that they have received the letters for enquiry and even after that they did not appear. Shri Nathu Ram one of the claimant send a letter Ex. W-7 which was received on 24th June, 1981 after the date of concluding of the enquiry proceedings. The enquiry proceedings were concluded on 9th May, 1981 and the claimant send that letter two months after the enquiry was conducted. After the enquiry report received the management send a show cause notice,—vide Ex. M-15 to these workmen and these workmen replied the show cause notice,—vide Ex. M-19. Even in the reply on show cause notices, the claimants do not raised any objection about conducting the enquiry. And the respondent after considering the replies of the workmen and finding of the Enquiry Officer decided to dismiss the workmen as the charges against them were of serious nature and such person can

After hearing the arguments of both the parties, and going through the file, I am of the view that on the issue of the domestic enquiry is fair and proper. The representative of the workmen or the workman in his statement raised no allegation about the enquiry. The workmen only referred Ex. W-7 which was sent by the workmen to the Enquiry Officer in which he has prayed that the enquiry may be conducted outside the factory because they have danger to the life and stated that they were not allowed to enter in the factory for the enquiry. But the workmen have produced no evidence to prove this fact. They could file the complaints before the Labour Inspector and Labour Officer in this respect and could produce the copy of the same in the Court in this regard that they were not allowed to enter in the factory. In the absence of any prove of their contention it can not be believed as there is no objection and allegation about the conduct of the enquiry in the demand notice and claim statement. The workmen have neglected the factum of enquiry in this case and could not prove that the enquiry was *mala fide* and not fair. So I hold that the enquiry was conducted fairly and properly by the management and this issue is decided in favour of the management and against the workmen.

ISSUE No. 2.

After deciding the enquiry issue in favour of the respondent, there is no need to discuss this issue except the termination was made on the basis of this enquiry, when the enquiry was fair and proper then the termination orders are justified. The workmen stated in their demand notice and claim statement that their services were terminated for victimization due to the trade union activities but they failed to prove this fact that their termination were made for the victimization of the trade union activities. There is no record on the file to show that their services were terminated due to the victimization for the trade union activities. So the termination is justified and in proper and the workmen are not entitled to any relief.

Dated the 29th April, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 906, dated the 27th April, 1982.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 28th June, 1982

No. 9(1)82-6Lab/5602.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s. Haryana Steel and Alloys Ltd., Murtial (Sonepat):

BEFORE SHRI BANWARI LAL DALAL
PRESIDING OFFICER, LABOUR COURT
HARYANA, ROHTAK.

Reference No. 180 of 78

BETWEEN THE WORKMEN S/SHRI MANGE RAM I, MANGE RAM II, MANGE RAM III, RAMESH CHAND, SHIV NARAIN, KAWAL SINGH, BHOLAN, DHAN SINGH, MADAN SINGH AND OM PARKASH AND THE MANAGEMENT OF M/S. HARYANA STEEL AND ALLOYS LTD., MURTHAL (SONEPAT).
Present:

Shri V. K. Sachar, for the workman.

Shri Surinder Kaushal, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID RK/511-77/33958, dated 19th July, 1978 under section 10(i) (c) of the I.D. Act for adjudication of the dispute existing between the workmen and the management of M/s Haryana

Steel and Alloys Ltd., Mурthal. The term of the reference was:—

"Whether the termination of services of the following workmen is justified and in order? If not, to what relief are they entitled?

- (1) Shri Mange Ram I
- (2) Shri Mange Ram II
- (3) Shri Mange Ram III
- (4) Shri Ramesh Chand
- (5) Shri Shiv Narain
- (6) Shri Kawal Singh
- (7) Shri Bholan
- (8) Shri Dhan Singh
- (9) Shri Madan Singh
- (10) Shri Om Parkash

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance on 11th August, 1978. The workmen filed their statement of claim on 7th November, 1978. The management filed their written statement on 18th January 1979. The management sought to amend their written statement with regard to the date 31st May, 1977 to be inserted in place of 7th September, 1977 which was allowed on 14th February, 1979. The workmen did not file the rejoinder and the following issues were framed on the basis of the pleas of the parties:—

- (1) Whether the relationship of master and servant exist between the management and workman named in the reference?
- (2) Whether no valid reference has been made and the same is not maintainable?
- (3) If issue No. 1 is decided in favour of the workmen and issue No. 2 against the management as per reference?
- (4) Whether the workman is stopped from taking the plea of retrenchment?

The workmen examined S/Shri Bholan, Mange Ram I, Om Parkash and Shri Maha Singh as their witnesses on 1st August, 1979 and the case was adjourned for remaining evidence of the workmen to 8th October, 1979. The evidence of the workmen could not be completed for various reasons and on 16th April, 1980 no one appeared for the workmen and adjournment was granted as requested by their representative through the telegram. The

workmen were duly intimated of the date fixed that is 30th April, 1980. The workmen representative again sought adjournment through another telegram which was again granted and the case was to be taken up on 23rd May, 1980 with a notice to the workman. On 23rd July, 1980 also no one appeared for the workmen. The workmen were then proceeded ex parte. Ex parte evidence of the management was recorded on 1st July, 1980. Arguments were heard on 22nd July, 1980. The workmen representative filed an application for setting aside the ex parte order on 5th August, 1980. The management filed the reply to this application on 12th September, 1980. The application dated 5th August, 1980 was allowed only to the extent that the workmen representative shall address his arguments on behalf of the workmen. Arguments were heard on 29th April, 1981. I have gone through the evidence oral as well as documentary and decide the issues as under.

ISSUE NO. 1 :

In their claim statement the workmen have alleged that they were employed permanent post in the scrapyard on 8th September, 1977. They were stopped from work and were not allowed to enter the factory by the security guards. The workmen further alleged that this amounted to retrenchment as defined in section 2(00) of the I. D. Act. Their termination was an act of unfair labour practice and exploitation of labour as such their termination was illegal and unjustified.

The management resisted the allegations of the workmen in their written statement on the ground that the workmen were not the employees of the respondent management and their existed no relationship of master and servant between them. In fact the workmen were the employees of job contractor Dhara Singh, who had undertaken the crushing turning boring to turning crusher under the agreement dated 7th March, 1977. The management further pleaded that after coming into force of the Contract Labour Regulation and Abolition Act reference under section 10 of the I.D. Act is invalid as the Contract Labour Act is a self-sufficient code. The management further pleaded that the workmen estopped to raise the plea of retrenchment as they never raised the same either in their demand notice or before the conciliation officer. The management has further asserted that as they have licensed under the Contract Labour

Act for engagement of contractors, the contractor has absolute control over the Labour engaged by him. The nature of work in the scrapyard was of casual nature and the labour was engaged on day to day requirement depending on the receipt of the scrap. The arrival of which was unpredictable.

WW-1 Shri Bholan deposed that he along with other workmen was working on crusher in the scrap department. He did not remember the name of the supervisor, then said Jai Narain was the supervisor. The crushing work was of permanent nature and scrap was the main raw material required for running the factory. He was provided with attendance card and the same was collected by the management at the time of payment of wages. In his cross examination the witness WW-1 admitted that he was not issued any appointment letter nor he applied for obtaining appointment. He further stated that he never fell ill and never obtained leave. He further gave out that scrap (Jhanga) generally used to come daily but occasionally it may come after a gap of three four days. He denied the suggestion as incorrect that he was employed by Shri Bhara Singh contractor and worked for about one and a half months with him.

WW-2 also made the same statement but he could not tell the date, month or year of his appointment. He could not tell as to on what account rupees 4 or 5 were deducted from their pay. He also could not recollect the date of his termination. In his reexamination WW-2 has stated that he was working for the last three four years when his services were terminated. No weekly rest was allowed to him, though there used to be weekly rest in the scrap department. He further stated that payment was made to him on payment of wages register but he did not know as to how many persons were employed in the time office. He did not name even a single employee working in the time office, though he visited that office for marking his presence and depositing the attendance card and for receiving wages. There used to be 11 workers working in the crushing department. 10 workers were the same whose cases have been referred under this reference.

WW-3 also made a similar statement to that of WW-1 and further gave out in his cross examination that he never worked on holiday nor any body else worked on holidays. No wages were paid to them for holidays. He further stated that he did not know the name of the employee who collected and issued the attendance card. He also did not know the

name of any one employee working in the time office or in the accounts branch.

WW-4 has stated in his cross examination that he did not know as to when the workmen concerned were employed. He also did not know who employed them and under whom they were working. He did not even know what job entrusted to them.

The management witness Shri D. S. Bhatti, Personal Officer of the respondent deposed that he had brought the attendance register, payment of wages register and the record pertaining to provident fund returns and the eligibility register under the Provident Fund Act. The names of the concerned workmen do not appear in these records as they were not the employees of the respondent. He further stated that there was no employee of the management whose name was not entered in these registers. He further stated that their factory has got a licenced under the Contract Labour Act for engaging contractors. The photocopies of the licences were Ex. M-1 and M-2 which include the name of Shri Dhara Singh. The photocopy of the agreement executed between Shri Dhara Singh and the management was Ex. M-3 and the workmen concerned had worked with Dhara Singh. The respondent management has not terminated the services of the workmen as they were not in the service of the management on 9th August, 1977.

The workmen did not controvert the plea of the management as given in their written statement—vide a rejoinder and have badly failed to establish that they were employed by the management as none of the workmen who appeared as witness could give the date or month or year of his appointment nor any one of them could tell the name of even one single employee working in the time office or accounts branch where from they had been associated for marking of their attendance, receiving and returning attendance card and also receiving their wages. The workmen have not been serious in pursuing their case also as none of them appeared on three four occasion for adducing their further evidence and at last they were proceeded against ex-parte. Under these circumstances the workmen have not been able to satisfy me either from the record or from the oral testimony of their witnesses that they were the employees of the respondent and not the employees of the contractor Shri Dhara Singh. On the other hand the management has proved from their record that the names of these workmen were not found in their record leading to

coculde that they were not the employees of the management. I, therefore decide this issue in favour of the management.

ISSUE NO. 2 to 4 :

In view of my findings on issue No. 1 and also from the perusal of the demand notice and the statement of claim in which there are clear contradictions for the date of termination. In the notice of demand it is 9th August, 1977 and in the statement of claim it is 8th September, 1977 and it has been mentioned three four times in the claim statement that the workmen were stopped from work with effect from 8th September, 1977 and at one place it has been mentioned as 8th September, 1977. This fact too casts doubts about the genuineness of the case of the workmen. The workmen representative has further argued that even when the workmen are the employees of the contractor, they cannot be deprived of their rights under the provisions of the I.D. Act. The workmen have raised the industrial dispute against the respondent who has been held to be not their employer and the industrial dispute as defined in section 2(k) of the I.D. Act envisages any dispute or difference between the employer and its workmen as such in the present case it cannot be held to be a dispute as defined in section 2(k) of the I.D. Act. Hence the reference is bad in law. The workmen ought to have raised the dispute against the contractor their employer. As a result of my findings on issue No. 1, I answer the reference and give my award that the workmen were not the employees of the management and were the employees of Shri Dhara Singh, contractor and the management did not terminate the services of the workmen, the question of justifiability or otherwise does not arise. The workmen are not entitled to any relief. The reference is returned in these terms.

Dated 22nd May, 1982.

BANWARI LAL DALAL,
Presiding Officer,
Labour, Court Haryana,
Rohtak.

Endorsement No. 1192 dated 28th May, 1982

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the I. D. Act, 1947.

BANWARI LAL DALAL,
Presiding Officer,
Labour, Court Haryana,
Rohtak.

No. 9(1)82-6 Lab/5740.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s. Escorts Ltd., Plant No. I—III, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD:

Ref. No. 167/77.

Between

THE WORKMEN AND THE MANAGEMENT OF M/S. ESCORTS LTD., PLANT I & III, FARIDABAD.

Present :—

Shri K. K. Khullar, for the management.
Nemo for the workman.

The State Government of Haryana referred the following dispute between the management of M/s. Escorts Ltd., Plant I & III, Faridabad and its workmen, by order No. ID|FD|70|44310, dated 5th/6th October, 1976, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

Whether the workmen are entitled to the grant of bonus for the year, 1975 at a higher rate than declared by the management under the payment of Bonus Act, 1965 ? If so, with what details ?

Notices were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, following issues were framed by my learned predecessor,—vide his order dated 30th June, 1980:—

- (1) Whether the demand has been espoused by a substantial number of workmen ?
- (2) Whether the Mercantile Employees Association has no locus standi to take up the demand ?
- (3) Whether the workmen are estopped from raising the demand under the settlement as alleged in para No. 3 of the preliminary objections ?

- (4) Whether the settlements pleaded by the management in para No. 3 of preliminary objections are legal and binding on the workmen ? If so, to what effect ?
- (5) Whether the reference is bad for the reasons given in para No. 4 of preliminary objections ?
- (6) Whether the workmen are entitled to the grant of bonus for the year, 1975 at a higher rate then declared by the management under the payment of Bonus Act, 1965 ? If so, with what details ?

The workmen examined Shri Sushil Anand, General Secretary, All Escorts Employees Union as WW-1. The management examined Shri S. N. Chadha, Deputy General Manager, Finance as MW-1.

ISSUE NO. 1 to 5 :

WW-1 stated that he worked in Plant-1. There were three plants of Escorts Ltd. at Faridabad. The employees of the three plants had common union named 'All Escorts Employees Union' since 1977. Prior to it, they were members of Mercantile Employees Association but now that union did not exist. The total strength of Plants No. I and III was about 2,500/3,000, out of this about 700-800 workers were members of Mercantile Employees Association. At that time, there was no other union of workers except the Mercantile Union. This union had given strike notice in October, 1977 for non-payment of bonus for the year 1975. The management did not lead any evidence on these issues nor the same were pressed during the arguments. Therefore, I decide these issues in favour of the workmen.

ISSUE NO. 6 :

On this issue, WW-1 stated that there was a common balance sheet for all the plants and conditions of service and scales of pay were also the same. In cross-examination he stated that he was working from 6th November, 1977 in plant No. 1. He denied the suggestion that condition of service is Plant No. I and III was different from Plant No. 1. He admitted that Plant No. I and III are collectively known T.E.D. He admitted the suggestion that in Plant No. II, the bonus was paid at different rate prior to 1975. He admitted that there

was another division of Escorts at Faridabad which was known as S.P.D. Plant-III was known as M.S.D. also. He further replied that he did not know if bonus, in Plant S.P.D. and M.S.D., was paid at different rate prior to 1975. He did not know the name of division of Escort at Patiala. He was not aware of it that there was factory at Bangalore also. MW-1 deposed that he was working with the management since 1963. His office was situated at 18/4 mile Stone, Mathura Road, Faridabad. Escorts Ltd. was registered company. Memorandum and article of Association was Ex. M-2. There are different divisions of the company. The profit & loss account and balance sheet were prepared separately for each division. Balance Sheet and profit & loss account of each division was available in envelope Ex. M-3 and marked as confidential. It was signed by the Auditors. The Auditors were appointed under the Companies Act. A separate balance sheet and profit & loss account was prepared for company by amalgamating of all the divisional balance sheet was required by the Companies Act. Consolidated balance sheet was Ex. M-4 for year 1975. Computation chart prepared by the Auditors was Ex. M-5. Plant No. I and III was jointly known as T.E.D. Bonus computation chart of each division was Ex. M-3 which was certified by the auditors. Income Tax Assessment's order and order of Appeal was placed in envelope Ex. M-6. Depreciation account summary prepared under Income Tax Act and Rules was Ex. M-7. Division-wise and item-wise details consisting of 47 pages was Ex. M-8. He further stated that bonus was paid division-wise on basis of operating result. Service conditions were also not identical in all the division. The controlling office of all the divisions at Faridabad, Patiala and Bangalore was in Delhi. In 1975, the company at Patiala existed. The controlling office for M.S.D. was at 19/6, Faridabad. The head of divisional was Shri S. D. S. Mongia, Vice-President. Production of each division was different. In T.E.D., tractors, shock observers for railway and automobile, railway couplings, brake equipments heating elements and X-ray equipments were manufactured. Each division made settlement with the workers. Copies of settlement were Ex. M-9 to M-29. There was a common settlement of all the plants situated at Faridabad which was dated 4th December, 1977. A.B.C. form under Bonus Act were

maintained separately for each division. In cross-examination he replied that the bonus chart was not prepared by him. He further replied that balance sheet and profit & loss account of T.E.D. were prepared under his directions. He admitted as correct that head office finances charges appeared as items in the profit and loss account. He admitted that head office charges was levied on each division on a fix uniform formula. Actual head office expenses were apportioned to the various division on the basis of turnover of each division. No bonus was paid who drawing more than Rs. 1,600 per month.

Learned representative for the workman argued that bonus was payable on the basis of profit and loss account of the company and not on the basis of divisional account. Secondly, he pointed out that the amount shown as head office expenditure in the balance sheet was not admissible in the case of Indian Companies as provided under item No. 6 (e) of the Second Schedule of Payment of Bonus Act. On the other hand, the learned representative of the

management argued that the workman did not submit any document showing net profit or allocable surplus for the purpose of payment of bonus. On the other hand, the management has placed on file all the material available with it.

I have considered the documents placed on file and arguments of the parties, I find that the management was within its right to pay bonus division-wise on the profit and loss account maintained separately for each division. As regards the contention of head office expenses, the learned representative for the workmen was correct and this was agreed to by the learned representative for the management but he pointed out that the management was liberal for any payment of bonus and further that the allocable surplus chart prepared were not in accordance with the payment of Bonus Act. He gave the following figures from the balance-sheet in accordance with the Payment of Bonus Act after deduction of amount of head office expenditure. He also pointed out that they could not any pick and choose of one item also. Computation was to be made in accordance with the Bonus Act. He gave following figures:—

(Rupees in lakhs)

1. Net Profit as per Profit and Loss A/c	67.30
2. Add back provision for :—	
(a) Bonus to Employees	5.63
(b) Depreciation	45.20
(c) Charity and Donation (Disallowance)	0.19
	—
Total	51.02
	—
Total (1+2)	118.32
3. Less : Sums deductible U/s 6 of the Act :—	
(a) Profit on sale of investments	0.05
(b) Development rebate written back	0.51
(c) Cash subsidy received from Government or from anybody corporate under law	2.33
(d) Depreciation as per Income Tax Act	51.51
(e) Initial depreciation	7.12
(f) Export Market Allowance	0.72
(g) Capital Expenditure on Scientific Research	1.75
	—
Total	63.99
	—
GROSS PROFIT	54.33
Less : Director Taxes payable U/s 7 of Income Tax Act	31.24
Balance	23.09
Add Back—Difference of income tax/surtax based on profit of 1974 with and without bonus	10.85
	—
	33.94
Less—Return on Capital U/s 6 of Act	39.20
Deficit (—)	5.26
Allocable surplus	Nil

After going through the above, I agree to the proposition that there was no surplus for payment of bonus for the year 1975.

While answering the reference, I pass my award that the workmen were not entitled to any further relief.

Dated the 29th May, 1982.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 557, dated 31st May, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 28th June, 1982

No. 9(1)82-6 Lab|5765.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of The Executive Engineer, Haryana State Minor Irrigation Tubewell Corporation, Kothi No. 997, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 199 of 1981

Between

SHRI BRAHM SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. THE EXECUTIVE ENGINEER, HARYANA STATE MINOR IRRIGATION TNBEWELL CORPORATION LTD. KOTHI NO. 997, SECTOR 15, FARIDABAD.

Shri Amar Singh, for the workman.

Shri G. S. Chaudhary, for the respondent management.

AWARD

This reference No. 199 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID|FD|105|80|

32117, dated 3rd July, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Braham Singh, workman and the respondent management of The Executive Engineer, Haryana State Minor Irrigation Tubewell Corporation Ltd., Kothi No. 997, Sector 15, Faridabad. The term of the reference was—

Whether the termination of services of Shri Braham Singh was justified and in order? If not, to what relief is he entitled?

Notice were issued to the parties, after receiving this reference order and the parties appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that he was appointed as T-Mate on 8th November, 1980 on a permanent job on a salary of Rs. 308.90 P. per month and he was removed on 6th February, 1981 in a revengeful spirit without giving the chance to the claimant to be explained. No charge-sheet or domestic enquiry was held against the workman and the orders are violation of principles of social and natural justice. The case of the respondent according to the written statement is that the workman was appointed as T-Mate purely on temporary basis against a seasonal post which was created due to the demand of water in irrigation Department in Ravi Crops and the services of the workman was liable to be terminated at any time after the expiry of such season and the workman has taken his full and final accounts after his removal from service and did not raise the demand notice to the respondent. The money was taken by the claimant voluntarily with a free will and without objection on 6th February, 1981.

On the pleadings of the parties following issues were framed:—

(1) Whether the termination of service of the workman is proper justified and in order? If not, to what relief is he entitled?

2. Relief.

The representative of the respondent argued on this issues that as stated by the respondent witness Shri Babu Lal, SDO, MTC as MW-1, the workman was appointed as T-Mate purely temporary and seasonal basis without calling the post from the Employment Exchange. The workman made an application Ex. M-1 and the officer made the order at Mark "A" on the same application and was sent to Tubewell. The MTC employees the person on the indent of

irrigation department in the Ravi Season. The applicant was employed for the Ravi Season only. In the month of February, they received a telegram Ex. M-2 from the irrigation Department in which the department instructed to stop the Tubewells on account of heavy rains and the demand of water is very low. So, according to this wire from the irrigation department, the respondent removed the persons including the claimant employed for this season. We gave the letter of termination Ex. M-3. The claimant submitted his discharge report which is Ex. M-4 and he was paid the salary up to date and the workman received the same without any objection as his full and final,—vide Ex. M-5 at Sr. No. 12. He further argued that the respondent took the same plea before the Conciliation Officer made the case clear which is Ex. M-6. He further argued that even claimant has stated in his statement as WW-1 that he was appointed on 8th November, 1980 on workcharge basis makes the case very clear that the claimant was appointed temporary for the season only, and when the season was over and the irrigation department did not require any water of the tubewell the persons were removed. No appointment letter was given to the workman as he has admitted in his cross-examination because the job was purely temporary and can be removed at any time and there is no claim of workman because he has worked with the respondent less than 3 months and cannot be said that he was appointed as permanent employee. The respondent employs the permanent staff by a regular procedure given in their rules. They can only employ the permanent staff after giving the notice to the Employment Exchange and they get the persons from the Employment Exchange and not otherwise so the claimant was temporary workcharge employee and there is nothing wrong in termination of service.

The representative of the workman argued on this issue that the workman was employed by the respondent on 8th November, 1980 as Tubewell Operator on a permanent post and his work and conduct was satisfactory during the service. He further argued that as stated by the workman in his statement as WW-1 he was given no notice of termination and no enquiry was made against him and he was not appointed for Ravi Crop because he was removed in the month of February, while the water for the Ravi crop is needed in the month of March and April, and even is junior works on those tubewell even after the removal and he was not given any compensation

at the time of removal from the service. The representative of the workman further argued that the workman was removed from service due to union activities as stated by him in his statement. So the termination was against the rules of natural justice, and the workman is entitled for the reinstatement with full back wages and continuity of service.

After hearing the arguments of both the parties and going through the file I am of the view that the workman has failed to prove his case. The demand notice and claim statement the workman had not written a single word about the cause of termination that his termination is due to union activities which he has stated in his statement. He has not produced any witness to prove this fact that he was victimized due to union activities. He has not even prove that he was a member of any union or that any union exist with the respondent. So the question of victimization does not arise. The workman has admitted in his statement that he was appointed on workcharge basis. The workcharge persons are always temporary and casual workmen and the fact is admitted by the workman that he was a temporary hand as stated by the respondent witness in his statement. The respondent has proved their case that the workman was appointed as temporary only for a Ravi crops season and he was removed after receiving the telegram from the Irrigation department, which is Ex. M-2, which is very clear that the Irrigation Department did not require any water in the canal from the Tubewell due to heavy rain and after that the respondent took the right decision to remove the temporary workcharge workman, which were appointed for the season only. The issue is decided in favour of the respondent and against the workman. In these circumstances, the workman cannot be given any relief and the removal by the respondent is justified.

This be read in answer to this reference.
Dated 26th May, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No. 1195, dated 2nd June, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.